

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO

3 ANTONIO GALLEGOS, KRISTIAN PETTINE,
4 ANDRE GALLEGOS, and K.L.P.L., a
5 minor child

6 Plaintiffs,

7 vs.

8 No. 1:12-CV-224-LH/KBM

9 CITY OF ESPANOLA, a municipal corporation,
10 JOE MARTINEZ, individually and in his official capacity;
11 JEREMY APODACA, individually and in his official
12 capacity; ROBERT VIGIL, individually and in his official
13 capacity; CITY OF ESPANOLA OFFICERS and SUPERVISORS JOHN
14 DOES 1 through 10, individually and in their official
15 capacities

16 Defendants.

17 DEPOSITION OF ANDRE GALLEGOS

18 July 1, 2013

19 8:48 a.m.

20 Cumbre Court Reporting, Inc.

21 2019 Galisteo, Suite A-1

22 Santa Fe, New Mexico 87505

23 PURSUANT TO THE FEDERAL RULES OF CIVIL PROCEDURE,
24 this Deposition was:

25 TAKEN BY: MARK A. BASHAM
ATTORNEY FOR THE DEFENDANTS

REPORTED BY: DEBORAH O'BINE
NEW MEXICO CCR #63
CUMBRE COURT REPORTING, INC.
2019 Galisteo, Suite A-1
Santa Fe, New Mexico 87505

DEBORAH O'BINE, CSR

Exhibit D

1 Go ahead.
2 A. I cannot recall.
3 Q. Okay. How long had you been awake?
4 A. Maybe a half hour.
5 Q. Okay. And then Antonio, Kolby and Kristian
6 arrived. What happened next?
7 A. And then they said that they were coming down to
8 open the office for the day. Antonio got in the shower.
9 Q. And then?
10 A. And then Kristian and I continued to talk.
11 Q. Where was the discussion held between you and
12 Kristian, what room?
13 A. In the computer room.
14 Q. Okay. As far as Kolby, how was Kolby dressed?
15 A. In a diaper.
16 Q. Anything else on?
17 A. No, sir.
18 Q. No shoes?
19 A. Yes.
20 Q. She had shoes?
21 A. Yes, she had shoes and socks.
22 Q. Okay. Then what happened?
23 A. And then we continued to talk, and we were in
24 the back room, as I say.
25 Q. Um-hm.

1 A. And I hear Antonio get out, and we still talk.
2 And then from there, I figure he's opening up for
3 business. So I decided to get on with my day. So me and
4 Kristian were wrapping it up, and I walk in towards the
5 kitchen.
6 Q. Okay. Had anyone else arrived?
7 A. Not that I know of.
8 Q. No one else had come to the house?
9 A. Like I said, I was talking to Kristian.
10 Q. Did you see anyone else in the house?
11 A. When I walked out, I saw two gentlemen. I
12 thought they were customers.
13 Q. What were they doing?
14 A. They were just there in the lobby.
15 Q. Okay. And what did you do?
16 A. When I was walking out is when I saw officers
17 following my dad to the house.
18 Q. Did you hear anything?
19 A. No, I didn't.
20 Q. Now, when you said you saw officers following
21 your dad to the house, were they moving quickly?
22 A. Yes, trailing him.
23 Q. And what was your dad doing?
24 A. He was walking inside the house.
25 Q. And then what happened?

1 A. And then I saw Officer Vigil attack my dad as he
2 was walking in the front door. And he pushed him against
3 the concrete wall. And at that time I was on the other
4 side of the glass door.
5 Q. Where was Kristian at this point?
6 A. Kristian, I don't know where she was at.
7 Q. Okay. Go ahead.
8 A. Okay. And then as Officer Vigil was pushing my
9 dad against the wall, another officer, Mr. Apodaca, to the
10 right side of him, reached over and hit him in the neck
11 with a Taser.
12 Q. Okay. Did you see your dad push Officer Vigil?
13 A. No, sir.
14 Q. Which way was your dad facing when Officer Vigil
15 attacked him?
16 A. He was facing to go outside the house.
17 Q. Okay. And when you say he attacked him, would
18 you please describe for us what you mean, "attack"?
19 A. Aggressively, swiftly.
20 Q. Okay. Aggressively, swiftly what?
21 A. Attacked him.
22 Q. Attached by --
23 A. From the back, yes.
24 Q. From the back?
25 A. Yes.

1 Q. And then you saw Officer Apodaca tase him in the
2 neck?
3 A. Correct.
4 Q. Then what happened?
5 A. Then once he tased him, they both, Officer Vigil
6 and Antonio, went towards the steps, the cement slab.
7 Q. Um-hm.
8 A. And then he hit him again in the left side.
9 Q. By "hit him again," what do you mean?
10 A. Tased him, my dad. And at that time they went
11 off the front steps, and I walked outside. And Officer
12 Apodaca was standing over my dad, and so was Vigil. By
13 that time my dad was already arrested on the slab.
14 Q. Okay. Was he handcuffed at that point in time?
15 A. Yes. And Officer Apodaca said, "Should I get
16 him again" and he zapped him in the back.
17 Q. By "zapped," you mean tased?
18 A. Tased, yes. And I walked outside at that time.
19 And Officer Apodaca ran up the stairs, and he put the
20 Taser to my face and told me -- he cursed at me, "You shut
21 the 'F' up, and you get against the wall," put my hands
22 up.
23 And I asked, "Why am I being arrested? What did
24 I do?" And he said to shut up and put my hands against
25 the wall, hands up.

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1 Q. Prior to him telling you to "Shut up," were you
2 saying something to him?
3 A. Yes. I had told him to stop tasing my dad.
4 When I opened the door, I yelled at him, "Stop tasing my
5 dad."
6 Q. How many times did you yell at him?
7 A. Twice.
8 Q. Did you say anything else?
9 A. That's it.
10 Q. Okay. And then what happened?
11 A. And then he patted me down and arrested me.
12 Q. Okay. What happened?
13 A. He arrested me.
14 Q. Did he say, "You're under arrest"?
15 A. Yes.
16 Q. Did he tell you what for?
17 A. No.
18 Q. Did he handcuff you?
19 A. Yes.
20 Q. Behind your back?
21 A. Behind my back.
22 Q. With what kind of handcuffs?
23 A. I don't know.
24 Q. Were they metal or --
25 A. Metal.

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1 Q. And then what happened?
2 A. Then he hauled me off to the cop car.
3 Q. Okay. And then what happened?
4 A. Could you be more specific?
5 Q. So he hauled you off to the cop car. Then what
6 happened?
7 A. I sat in the cop car.
8 Q. Could you see anything going on?
9 A. No.
10 Q. Was it that cop car that's on that diagram?
11 A. Yes. This cop car -- this cop car (indicated)?
12 Q. Yes.
13 A. Yes.
14 Q. Which side were you on?
15 A. The right side.
16 Q. Go ahead and put an "X" there.
17 MR. BASHAM: Let's go ahead and mark that as
18 Exhibit 1 to Andre's deposition.
19 (Exhibit 1 marked.)
20 Q. At the time that you claim the officer arrested
21 you, could you see Kristian?
22 A. No, sir.
23 Q. Could you see Kolby?
24 A. No, sir.
25 Q. Could you see what the guys in the lobby were

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1 doing?
2 A. No, sir.
3 Q. Did you have any communication with the guys in
4 the lobby?
5 A. No, sir.
6 Q. Could you hear anything from where you sat in
7 the cop car?
8 A. No, sir.
9 Q. What happened then?
10 A. The cops, I asked them -- I told them I had a
11 medical condition, and it was hot in the car. And I asked
12 if I could get some air. And he cracked the window that
13 much (indicated) in the middle of the summer. So I just
14 sat there.
15 Q. Was it a real hot day?
16 A. Yes.
17 Q. Okay. Again, you couldn't hear anything going
18 on?
19 A. No, sir.
20 Q. And couldn't see anything?
21 A. No. All I could see is straight in front of me.
22 There was a cage.
23 Q. But you couldn't see through the cage and
24 through the windshield that was facing the house?
25 A. After -- yes, I could, barely, only this front

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1 door.
2 Q. And what did you see during that time that you
3 sat in the car?
4 A. I just saw the officers talking and Kristian.
5 Q. Okay. Could you hear anything?
6 A. No, sir.
7 Q. What did it look like? Did it look like a
8 heated talk?
9 A. No, sir.
10 Q. Okay. Just like normal conversation?
11 A. It's just a conversation, from my point of view.
12 Q. Okay. And then what happened?
13 A. And then the officers went inside the house.
14 Q. Okay. And then what happened next to you? How
15 long a time was this since you were taken to the car?
16 A. I don't know how long I was in there.
17 Q. Okay. Well, then, again, you saw the officers
18 go in the house. What happened next?
19 A. I see them walking both ways back and forth.
20 Q. How many officers were there?
21 A. I saw two officers.
22 Q. Okay. Did you see a public service aide there?
23 A. A public service aide? Yes, I did.
24 Q. So that's two officers and a public service
25 aide, correct?

1 Q. And can you tell us who they were?
2 A. Yes. They were my cousins, Enrico Sanchez and
3 Isabella.
4 Q. And had they left -- the parents asked you to
5 watch them?
6 A. Yes.
7 Q. And when you watched them, when the parents
8 asked you to, were you alone?
9 A. Yes.
10 Q. And you've done that on more than one occasion?
11 A. Yes.
12 Q. And do you recall the first time, at what age
13 you were when you first were asked to watch a cousin or a
14 child of that age?
15 MR. BASHAM: Objection. Form. Go ahead.
16 Q. (BY MR. THOMPKINS) You can answer.
17 A. Can I recall my age?
18 Q. Yes. What's the youngest age you recall ever
19 watching a child?
20 A. Watching a kid? I've been watching kids,
21 cousins, since I was a little boy, just being older in the
22 group. So I'd say I've been with kids since I was a kid
23 myself, eight years old, you know, ten years old.
24 Q. And on July 31st of 2010, how old were you?
25 A. I was 17.

1 Q. And when is your birthday? When did you turn
2 18?
3 A. August 5.
4 Q. So July 31, you were literally four days shy of
5 being 18?
6 A. Yes, sir.
7 Q. And did the officers ever ask you if you were
8 able to look after Kolby while your parents were detained?
9 A. No.
10 MR. BASHAM: Objection. Asked and answered.
11 Q. (BY MR. THOMPKINS) Go ahead.
12 A. No.
13 Q. Did you have a driver's license then?
14 A. Yes.
15 Q. You had the ability to drive yourself wherever
16 you wanted?
17 A. Yes.
18 Q. And, in fact, how did you get to the business,
19 when you spent the night, how did you get there the day
20 of?
21 A. In my red truck, my red pickup.
22 Q. When you were placed in the police car, was the
23 police car running?
24 A. No, sir.
25 Q. And there was no air conditioning running?

1 A. No, sir.
2 Q. You were asked to look at this Incident
3 Narrative, Supplemental Narrative, and one of the
4 questions that you were asked is whether you disagreed
5 with various sentences in there. You were approached by
6 Officer Apodaca after you made a statement about your dad
7 being tased?
8 A. Correct.
9 Q. In specific, do you recall exactly what he did
10 and what he said to you?
11 A. Yes. He pointed the Taser at me in the face and
12 told me to "shut the fuck up and get against the wall,
13 hands up."
14 Q. How close to your face did he place his Taser?
15 A. About --
16 Q. Can you show with your hand how close?
17 A. About this close (indicated).
18 MR. BASHAM: Let the record reflect, about a
19 foot away.
20 A. About a foot away.
21 Q. And you were placed in handcuffs?
22 A. Correct.
23 Q. Did you need to be told that you were under
24 arrest after the handcuffs were on you? Did you believe
25 you were arrested?

1 A. No, I don't think that I would have to be told.
2 It's obvious.
3 Q. Were you free at that point to leave and go
4 about your business?
5 A. No, sir.
6 Q. Did the officers or any officers ever tell you
7 that you were going to be transported to a youth shelter?
8 A. No, sir.
9 Q. Were you transported to the youth shelter?
10 A. No, sir.
11 MR. THOMPKINS: I have no further questions.
12 We'll read and sign, if you don't have any
13 questions.
14 (The Deposition concluded at 10:00 a.m.)
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